Statement of

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AND TRANSPORTATION

SUBCOMMITTEE ON

SURFACE TRANSPORTATION AND MERCHANT MARINE INFRASTRUCTURE, SAFETY, AND SECURITY

Hearing on

Improving the Performance of our Transportation Networks: Stakeholder Perspectives

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Introduction

Chairwoman Fischer, Members of the Subcommittee, thank you for the opportunity to testify today about the performance of our transportation networks and, more specifically, on ways to improve commercial motor vehicle safety. My name is Jim Mullen, and I am the Executive Vice President and General Counsel for Werner Enterprises, headquartered in Omaha, Nebraska. Founded in 1956, Werner is now among the five largest truckload carriers in the United States, with a diversified portfolio of transportation services that includes dedicated; medium-to-long-haul, regional and local van; expedited; temperature-controlled; and flatbed services. Werner also provides value-added services such as freight management, truck brokerage, intermodal, and international logistics.

Madam Chairwoman, today I will speak about Werner's and the trucking industry's commitment to safety, our safety record, and measures we support to continue this long-term trend. I will also talk about opportunities that the Federal Motor Carrier Safety Administration (FMCSA) has to improve safety, the need to sharpen the agency's focus, and the unnecessary regulatory burdens that have been placed on Werner and companies like ours. Finally, I will touch briefly on the investment our country must place in its infrastructure to ensure the safe and efficient flow of commerce and much needed economic growth.

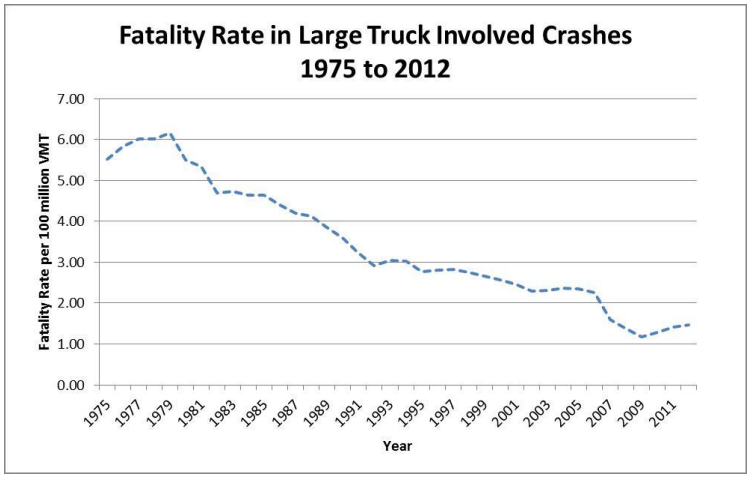
The Industry's Commitment to Safety

The trucking industry is justifiably proud of its commitment to safety. Together, Werner Enterprises and the approximately five hundred thousand other carriers who comprise the industry invest over an estimated $7 billion in safety annually. At Werner alone we spend $40 million on safety, some of it to meet a myriad of regulatory requirements, but much of it on voluntary, progressive safety initiatives. This includes the adoption of emerging crash prevention technology such as forward collision warning and lane departure devices. During 2015, Werner will spend an approximately $6.0 million on these systems, and approximately half of our fleet will be equipped with this technology.

	2013	2014
Annual Cost of Safety Compliance	$7,316,302.00	$7,454,341.00
Annual Safety Technology Spend	$4,870,957.00	$5,091,179.00
Annual Driver & Safety Training Spend	$353,803.00	$378,561.00
Annual Driver Safety Pay	$30,686,630.00	$28,223,848.00
Total Spend	**$43,227,692.00**	**$41,147,929.00**

Descriptions of spend:	
Annual Cost of Safety Compliance	*Desc: Include costs like: staff wages and benefits, drug tests, consultants (e.g., 3rd party compliance providers), MVR costs, PSP costs, etc.*
Annual Safety Technology Spend	*Desc: Include costs like: ELDs, on-board safety, back-office safety technology, spec'ing trucks with added safety technology, etc.*
Annual Driver & Safety Training Spend	*Desc: Include costs like: training material costs, training consultants, staff wages, if not above in question #4. Do not include lost revenue from down days of training.*
Annual Driver Safety Pay	*Desc: Include costs like: quarterly and/or annual safety bonuses, bonuses for clean DOT inspections, etc.*

These investments in safety have yielded impressive dividends for the industry. Over the past decade the number of large truck-related fatalities has dropped 21% and the large truck fatality rate has dropped 37%. At Werner, we have experienced a 22% decrease in preventable Department of Transportation (DOT) reportable crashes from 2007 through the end of 2014. We use 2007 as the baseline because a change in Werner's data systems in 2007 makes previous years' data unreliable.



Much of this improvement is due to progressive safety initiatives supported by Werner and fellow industry members. For example, in addition to the aforementioned crash prevention technologies, Werner has invested in state of the art driver training simulators, critical event recording, predictive modeling, and other items. It is the motor carrier's responsibility to put the professional driver in the best position to be as safe as possible. Technology, training, and placing safety as a company core value are vital to providing the driver with the tools and culture to drive safely.

Necessary Steps for Continued Improvement

To continue this long term trend requires a commitment on the part of the government and industry to focus on the primary causes of crashes and effective countermeasures. The data on these factors are very clear and compelling; the vast majority of crashes, close to 90%, are the result of driver error. It is quite logical, then, for FMCSA to focus on driver behavior and means to impact it. However, the agency's plans and priorities suggest a much different focus.

For example, because speeding is the greatest single contributor to truck crashes, the industry petitioned FMCSA and the National Highway Traffic Safety Administration in 2006 to establish a rule requiring the use of speed limiters on all trucks over 26,000 lbs. Yet, to date, neither agency has issued a proposed rule to this end. We understand a proposal is in the works, but have yet to see it. The industry and FMCSA must work together to focus on efforts that have a direct impact on driver safety, as opposed to issues that may be driven by political or economic issues. We owe that to the motoring public.

FMCSA's use of enforcement funding and resulting activity demonstrates a similar need to redirect the agency's focus. For example, FMCSA's *Safety Program Effectiveness Measurement Report*, shows that on-road traffic enforcement activity is far more effective at preventing future crashes than standard roadside inspection activity. The latter typically involves a vehicle inspection to detect component defects and a review of the driver's paper work (e.g. hours of service records of duty status) and credentials (e.g., license and medical examiner's certificate). The former, traffic enforcement, consists of on-road monitoring of driver behavior (e.g., moving violations) coupled with some form of inspection activity (e.g., a "walk-around" inspection of vehicle components).

FMCSA's aforementioned report reflects that for every 1,000 traffic enforcements 12.05 crashes are prevented compared to 2.7 crashes per 1,000 standard roadside inspections. Similarly, .41 lives are saved per 1,000 traffic enforcements compared with only .09 lives per 1,000 roadside inspections. In other words, traffic enforcements are more than four times more effective at preventing crashes and saving lives.[1]

The table below, taken from the FMCSA effectiveness report, shows the breakdown of crashes and injuries avoided and lives saved by roadside inspections and traffic enforcements respectively.

Table 7. Program Effectiveness: U.S. Domiciled vs. Non-U.S. Domiciled Carriers, FY 2009

Types of Benefits	Estimated Benefits: U.S.	Estimated Benefits: Non-U.S.	Estimated Benefits per 1,000 Interventions: U.S.	Estimated Benefits per 1,000 Interventions: Non-U.S.
Crashes Avoided Due to Roadside Inspections	6,768	1,375	2.70	4.91
Crashes Avoided Due to Traffic Enforcements	8587	201	12.05	11.13
Total Crashes Avoided	***15,355***	***1,576***	***4.77***	***5.29***
Injuries Avoided Due to Roadside Inspections	4,324	878	1.72	3.14
Injuries Avoided Due to Traffic Enforcements	5486	128	7.70	7.11
Total Injuries Avoided	***9,810***	***1,006***	***3.05***	***3.38***
Lives Saved Due to Roadside Inspections	229	47	0.09	0.17
Lives Saved Due to Traffic Enforcements	290	7	0.41	0.37
Total Lives Saved	***519***	***54***	***0.16***	***0.18***

[1] *FMCSA Safety Program Effectiveness Measurement: Intervention Model Fiscal Year 2009*, FMCSA, April 2013.

Given this compelling data, it is logical to place more emphasis on traffic enforcements than on roadside inspections. However, figures available on FMCSA's website indicate that traffic enforcements only comprise a small portion of field enforcement interventions (e.g., 10%) and suggest that this percentage has been dropping over the past seven years. The agency should find this trend both alarming and compelling.

FMCSA's program effectiveness document points out that the "*evaluation provides FMCSA and State MCSAP partners with a quantitative basis for optimizing the allocation of safety resources in the field*." This statement is true, but it appears as though FMCSA and its state partners have not actually used the evaluation for this purpose. If the agency and states had done so, we would have observed an *increase* in traffic enforcement activity, not a *decline*. This troubling decline begs the question: "How many lives would not have been lost if FMCSA had devoted greater resources to traffic enforcement over the past several years?"

Faced with this data, FMCSA recently announced its plan to train *other* law enforcement officers (e.g., municipalities) – not those funded under its commercial motor vehicle (CMV) enforcement program – to conduct traffic enforcement on large trucks. While we appreciate FMCSA's acknowledgement and the need to focus on driver behavior, their actions miss the mark. The training of non-CMV enforcement personnel appears to be an attempt to deflect the criticism of FMCSA's management of its CMV enforcement program. To be clear, the agency has not announced <u>any</u> steps to ensure that the funds spent in its Motor Carrier Safety Assistance Program (MCSAP) are used more efficiently by devoting a greater percentage of these funds to traffic enforcement.

The plan to train non-CMV enforcement officers to conduct traffic enforcement on CMVs is flawed for a number of reasons. First, FMCSA's Program Effectiveness Report points out that traffic enforcement coupled with some vehicle inspection activity is four times more effective than vehicle inspection activity alone. The non-CMV officers conducting traffic enforcement will not be conducting vehicle inspections. Second, the traffic enforcement data (e.g., violations, citations) will not be captured and uploaded into FMCSA's Motor Carrier Management Information System, which feeds the agency's safety monitoring and measurement system. This is a critical flaw since FMCSA's research shows that data on driver behavior (e.g., moving violations) has the strongest correlation to crash risk and provides the best means for identifying unsafe fleets. Finally, training non-CMV officers to conduct CMV enforcement activity raises the strong potential that some time and resources will be shifted away from passenger vehicle enforcement as a result.

In addition to focusing its research, regulatory, and enforcement programs on the primary cause of crashes, FMCSA should consider ways to promote voluntary safety initiatives embraced by the industry. Werner and other motor carriers like us have found that several emerging, non-mandated, safety technologies hold tremendous promise for reducing crashes. However, the government lacks data on their efficacy given their relatively limited use. By providing incentives to fleets like ours to use such technologies, the agency can promote broader adoption and, as a result, gather data to better understand their safety benefits. FMCSA has

indicated their interest and willingness to consider such incentives; we look forward to collaborating with the agency on future efforts to this end.

Views on Current Safety Issues

I want to take this opportunity to offer the industry's views on a number of current safety issues, with the hope that Congress will provide greater oversight of them.

Electronic Logging Devices

The most recent highway reauthorization legislation, Moving Ahead for Progress in the 21st Century Act (MAP-21), mandated that FMCSA complete a rulemaking to require the use of electronic logging devices (ELDs) to monitor hours of service compliance. Such a mandate is logical and appropriate. Previous FMCSA research has shown a strong correlation between compliance with the hours of service regulations (in place at the time, 2010) and safety outcomes. For this reason, the call for a mandate had broad support from industry, law enforcement, and consumer advocacy groups.

Werner is a strong advocate of an ELD mandate and was an early pioneer of ELD use. In 1998, Werner became the first motor carrier in the country to implement electronic logs for recording drivers' work and driving hours. Six years later, in 2004, Werner became the first carrier granted an exemption by DOT from the requirement to complete and maintain paper records of duty status.

Werner, like much of the industry, is pleased to see that FMCSA is making progress on this issue and is on track to issue a final rule later this year. However, Congressional oversight is still needed in this area. First, Congress should watch carefully to ensure that the publication of the final rule mandating ELDs is not further delayed. Though the MAP-21 deadline for this final rule was October of 2013, FMCSA does not project publication of it until the end of September, 2015. Second, Congress should be alert to the potential that the rule could include some unreasonable requirements, especially with respect to the grandfathering of existing devices. It is important that early adopters of such devices should not ultimately be penalized for the investments they have made in safety by having their devices declared obsolete by regulation.

Entry Level Driver Training

Werner and the trucking industry believe that the current CDL safety training requirements can be, in some instances, insufficient to properly prepare new drivers for the rigors of the road. At Werner, we hire a large number of drivers directly out of truck driving school and have very close relationships with the largest schools in the nation. Therefore, we have first-hand knowledge of the current system's limitations. Werner and the trucking industry as a whole support an entry-level driver training rule. Such a rule should map to the safety skills all drivers should possess. Its requirements should be performance-based rather than hours-based. Neither Werner nor any other responsible trucking company has a place for drivers who have completed a minimum number of hours, but failed to internalize the necessary skills to safely operate a truck.

A previous attempt at promulgating an entry-level driver training rule failed cost-benefit analysis and had to be withdrawn. Werner supports FMCSA's current proposed negotiated rulemaking process. It is the industry's hope that the process reaches a consensus recommendation, one which has benefits that exceed its costs.

Hours of Service

In December 2011, FMCSA issued a final rule making changes to the hours of service regulations for truck drivers. This action on the part of the agency represents government overreach of the worst kind. Operating under the previous hours of service regulations, the number and rate of truck involved crashes, injuries, and fatalities all declined dramatically. Nonetheless, FMCSA elected to revise them.

The result was a set of rules that were unjustified and harmful both to highway safety and the economy. In the rulemaking process, FMCSA acknowledged that the modest safety benefits of the changes would come nowhere near to offsetting their huge costs to productivity. To justify these revisions, the agency relied on the speculative theory that drivers working under the new rules would use additional off-duty time to get rest, would then become healthier, and would live longer lives as a result. By monetizing this theoretical benefit, and understating the negative economic impacts, FMCSA was able to convince the White House Office of Management and Budget that the new rules met the required cost-benefit test.

Subsequent experience with the new hours of service rules demonstrated that FMCSA's estimate of the impact to drivers, trucking companies, and the economy was substantially off the mark. For example, FMCSA predicted that new restrictions it imposed on driver use of the hours of service weekly "restart" provision would result in a net societal benefit of $133 million. However, a subsequent analysis conducted by the American Transportation Research Institute, after the "restart" restrictions went into effect, found that the rules were resulting in a net cost to the industry of between $95 million and $376 million annually.

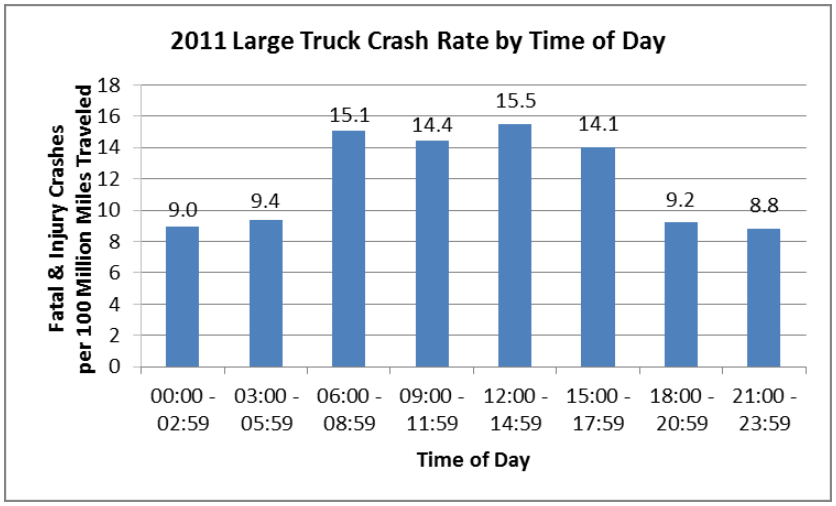
One of the restrictions FMCSA imposed in July 2011 was that driver weekly "restart" rest periods must include two consecutive nighttime segments of 1 – 5 a.m. However, the results of Congressionally-mandated FMCSA research released in January of last year showed that drivers meeting this restriction were more likely to operate in the daytime when the risk of crashes is greater. FMCSA later admitted that it did not take this safety impact into account when the agency calculated the net safety benefits of the new rules.

Crashes Table 4. Crashes Involving Large Trucks by Time of Day and Crash Severity, 2012

Time of Day	Fatal Crashes		Injury Crashes		Property Damage Only Crashes	
	Number	Percent	Number	Percent	Number	Percent
12am - 3am	294	8.5%	2,000	3.3%	6,000	2.4%
3am - 6am	340	9.8%	3,000	4.7%	7,000	2.8%
6am - 9am	515	14.9%	12,000	16.8%	41,000	17.0%
9am - 12pm	552	15.9%	15,000	20.3%	53,000	22.1%
12pm - 3pm	626	18.1%	16,000	22.5%	55,000	22.6%
3pm - 6pm	529	15.3%	12,000	17.0%	49,000	20.2%
6pm - 9pm	331	9.6%	7,000	10.3%	21,000	8.6%
9pm - 12am	276	8.0%	4,000	5.1%	10,000	4.2%
Unknown	1	*	*	*	*	*
Daytime (6am - 6pm)	*2,222*	*64.1%*	*56,000*	*76.6%*	*198,000*	*81.9%*
Nighttime (6pm - 6am)	*1,242*	*35.9%*	*17,000*	*23.4%*	*44,000*	*18.1%*
Total	**3,464**	**100.0%**	**73,000**	**100.0%**	**241,000**	**100.0%**

*Less than 500 or less than 0.05 percent.
Note: A large truck is defined as a truck with a gross vehicle weight rating (GVWR) greater than 10,000 pounds.
Sources: Fatal Crashes: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS). Injury and Property Damage Only Crashes: National Highway Traffic Safety Administration, General Estimates System (GES).

FMCSA Large Truck and Bus Factbook 2012, page 48, June 2014.



Assessment of the FMCSA Naturalistic Field Study 5 on Hours-of-Service Restart Provisions, American Transportation Research Institute, Page 10, April 2014.

Given this elevated risk of increased daytime traffic and the disparity between the real-world impacts of the rules and FMCSA's projected impacts, Congress recently suspended the "restart" restrictions pending additional research. The agency quickly began this research to meet a 12 month deadline. At the same time, the Government Accountability Office (GAO) is also conducting a review of FMCSA's previous "restart" field study. The industry sincerely hopes Congress provides close oversight of these studies and, unless they surprisingly demonstrate compelling reasons to the contrary, takes action to permanently vacate the "restart" restrictions that have been suspended only temporarily.

Compliance, Safety, Accountability

Werner Enterprises, like much of the industry, strongly supports the objectives of FMCSA's Compliance, Safety, Accountability (CSA) program. Such a data-driven approach to identifying the least safe operators and targeting them for intervention is laudable. Further, a prioritization approach of this type is necessary, given FMCSA's limited resources and ability to audit only a small percentage of the industry each year.

However, we have grave concerns about CSA's ability to accurately identify the least safe motor carriers, and the impact on safe motor carriers who are erroneously labeled otherwise. Many of Werner's concerns were highlighted by a GAO report, *Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers.*[2] The study confirmed many shortcomings of the program including: a dearth of data which results in a great majority of motor carriers not being scored; a lack of a statistical correlation between the vast majority of regulatory violations and crash risk, and the fact that carriers' scores are often unreliable indicators of future crash risk. Moreover, GAO found that CSA is an imprecise tool that cannot accurately identify an individual fleet's crash risk, and until deficiencies are addressed, it is inappropriate to pursue a rulemaking to tie safety fitness determinations to CSA Safety Measurement System (SMS) scores. Issues with CSA that are of importance to Werner and other industry members also include the disparate enforcement among the states, the flaws in the mileage utilization factor to the detriment of fleets with teams and high productivity, and flaws in the scoring system in Unsafe Driving BASIC and Hazmat BASIC. All of these create an uneven playing field for carriers under CSA.

These limitations are of great concern to the trucking industry because third parties (e.g. shippers, brokers, insurers, banks, etc.) use publicly available CSA SMS scores to make important business decisions. In these cases, inaccurate scores can have serious implications. As such, Werner supports the industry's call to remove CSA scores from public view until peer reviewed research confirms a strong statistical correlation between individual fleets' scores in each measurement category and future crash risk.

Werner is also deeply bothered by FMCSA's use of crash data to measure fleet safety performance. Specifically, the CSA Safety Measurement System (SMS) uses all crashes, including those motor carriers neither caused nor could have prevented, to assess their safety performance. As a result, a truck driver who is the victim in a crash (e.g., rear-ended by a drunk driver) is scored the same as one who causes such a crash. This is significant, since the most common DOT reportable crash involving a Werner driver is being struck from behind by another vehicle.

The trucking industry has long held that it is patently illogical to use obvious not-at-fault crashes to measure fleet safety performance. The ill-effect of doing so is two-fold. First, carriers

[2] *Modifying the Compliance, Safety, Accountability Program Would Improve the Ability to Identify High Risk Carriers*, Government (Washington, D.C.: Government Accountability Office, February 2014), http://www.gao.gov/assets/670/660610.pdf.

involved in such crashes are erroneously labeled as being unsafe. Second, these carriers are then more likely to be targeted for agency interventions, a waste of FMCSA's limited enforcement resources.

FMCSA has responded to this concern not by removing such obvious crashes from the system, but by conducting a multiyear study of the efficacy of using police accident reports (PARs) to make crash accountability determinations. Just recently, FMCSA released this report and contended that PARs were not sufficiently reliable for this purpose and that a process to make such crash accountability determinations would not be cost-beneficial.

FMCSA issued the results of this study a full five years after the industry urged the agency to remove crashes where it is plainly evident that the truck driver did not cause the crash. For example, the American Trucking Associations suggested that FMCSA address crashes such as when a motorist driving the wrong way on a divided highway strikes a truck head-on, or when a passenger vehicle rear-ends a truck stopped at an intersection. Rather than taking the appropriate action to address these crashes, FMCSA is obfuscating the issue by conducting lengthy research on the ability to make determinations on *all* crashes. In addition, now that the research is complete, the agency is still not proposing any specific action, but soliciting suggestions for next steps, instead.

Recognizing the inequity of scoring fleets based on crashes they did not cause, and how targeting fleets for enforcement action based on such crashes wastes Federal enforcement resources, Congress should take action. FMCSA should be required to immediately erect a process to remove from consideration those crashes where it was plainly obvious the truck driver did not cause the crash.

Infrastructure Investment

Much like the rest of the industry, Werner is deeply concerned about the state of our national infrastructure. Underinvestment in the highway system has caused transportation arteries to deteriorate, producing significant inefficiencies for the trucking industry and disrupting supply chains. Congestion on the Interstate System alone cost the trucking industry $9.2 billion in 2013 and wasted more than 141 million hours.[3] This was equivalent to 51,000 drivers sitting idle for a full working year. Furthermore, congestion wastes fuel and increases the output of emissions. In addition, sitting in traffic adds stress to drivers and may limit their compensation, exacerbating the challenges associated with hiring and retaining employees.

Interestingly, 89% of Interstate System congestion occurred on just 12% of the network,[4] suggesting that focused attention on the most problematic locations can resolve much of the gridlock that plagues trucking companies and their drivers. To address this fact, the trucking industry recommends dedicating federal revenue toward addressing major freight bottlenecks.

[3] American Transportation Research Institute, *Cost of Congestion to the Trucking Industry*, April 2014.
[4] Ibid.

It is also important to note that highway congestion does not just affect truck deliveries. The intermodal movement of freight by railroads, barges, ships and aircraft often relies on trucks for part of the delivery. Any disruption to truck travel can severely affect the efficiencies of these other freight modes. Due to these interdependencies, the trucking industry has joined with other interested parties in a Freight Stakeholders Coalition. The coalition has released a platform of recommendations for reauthorization,[5] many of which are of interest to this Committee. The coalition recommends establishment of a new multimodal freight fund outside of the Highway Trust Fund to address the many infrastructure challenges that hamper delivery of goods. In addition, the coalition believes that establishment of a freight office within the Office of the Secretary of Transportation would raise the profile of goods movement within DOT and help to coordinate efforts across modal administrations. Finally, the coalition believes that Congress should continue to encourage states, metropolitan planning organizations, and localities to develop freight planning expertise to address multi-modal freight mobility as part of their planning processes.

Summary and Conclusion

Chairwoman Fischer, as I have explained, the trucking industry has a strong commitment to safety and an impressive record to show for it. Continued improvement will require a focus on the primary causes of crashes, especially driver behavior, and incentives for the voluntary adoption of progressive safety programs. It will also require close Congressional oversight of FMCSA's current activities. For instance, Congress should ensure that the final rule mandating ELD use is issued in a timely fashion. A future entry level driver training proposal must be reasonable, appropriate and effective. The agency's CSA SMS must be improved so that motor carriers' scores reliably and accurately reflect their safety performance and, until then, these scores should be removed from public view. Congress should carefully evaluate FMCSA and GAO studies of the hours of service rules and, unless the studies can demonstrate that the true net safety benefits outweigh the real impacts, permanently suspend the "restart" restrictions implemented in 2011. Finally, a commitment to infrastructure investment is needed to provide for the safe and efficient flow of commerce and a foundation for economic growth.

[5] https://www.intermodal.org/assets/private/2014freightstakeholderscoalitionplatform.pdf